

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Application of Western Massachusetts Electric Company for Approval of the 2001 Amendatory Agreement)))))	D.T.E. 01-99
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**WESTERN MASSACHUSETTS ELECTRIC COMPANY’S MOTION
TO REOPEN THE RECORD AND MAKE AN ADDITIONAL FINDING**

Pursuant to 220 C.M.R. 1.11(7), Western Massachusetts Electric Company (“WMECO”) respectfully requests that the Department of Telecommunications and Energy (“Department”) re-open the record in the above-referenced proceeding. WMECO requests that the Department re-open the record in this proceeding for purposes of considering additional information and making an additional finding relating to the treatment of excess decommissioning funds, as described in a Memorandum of Understanding Among Entergy Nuclear Vermont Yankee (“Entergy”), Vermont Yankee Nuclear Power Corporation (“Vermont Yankee”), Central Vermont Public Service, Green Mountain Power Corporation, and the Vermont Department of Public Service (the “MOU”). In support of this Motion, WMECO states as follows:

1. On June 4, 2002, the Department approved WMECO’s Petition for Approval of: (1) an amendatory agreement between WMECO and Vermont Yankee dated September 21, 2001 (the “2001 Amendatory Agreement”); and (2) the recovery in WMECO’s transition charge of (a) Vermont Yankee’s ongoing cost-of-service, and (b) the costs and revenues from the power purchased from Vermont Yankee under the 2001 Amendatory Agreement.

2. Vermont Yankee is a Vermont corporation that owns and operates the Vermont Yankee Nuclear Power Station (the “Station”), which is a nuclear electric generating station having a net capability of approximately 510 megawatts located in Vernon, Vermont.

3. WMECO is a sponsoring shareholder of Vermont Yankee with a 2.5 percent wholesale contract entitlement in the net capacity, output, and ancillary products of the Station.

4. Vermont Yankee has entered into a PSA, dated August 15, 2001, to sell the Station and related assets, including a pre-funded decommissioning trust, to Entergy. The 2001 Amendatory Agreement, approved by the Department on June 4, 2002 in *Western Massachusetts Electric Company*, D.T.E. 01-99 (2002) (the “June Order”), is related to the sale of the Station by Vermont Yankee to Entergy.

5. The MOU, included in the record of this proceeding as Exh. AG-RR-SUPP-1(a), supplements the terms of the transaction between Vermont Yankee and Entergy for the sale of the Station, in part, by providing that any excess funds remaining in the decommissioning trust fund be shared between Entergy and Vermont Yankee, if decommissioning of the Station is delayed beyond the currently expected completion date of March 31, 2022. Pursuant to an agreement between WMECO and the Attorney General, WMECO agreed to pass on to its electric customers the ratable share any benefits received pursuant to this provision of the MOU (see attached letter agreement of March 12, 2002).

6. On June 13, 2002, the Vermont Public Service Board (the “VPSB”) issued its “Order Approving Sale of Vermont Yankee Nuclear Power Station” (the “Vermont

Order”). The Vermont Order included a condition, later clarified by the VPSB in its “Order re: Motions to Alter or Amend, and to Unseal Exhibit” issued on July 11, 2002, and its “Order of Clarification” issued on July 15, 2002 (together with the July 11 order, the “Subsequent Orders”), rejecting the sharing of any excess decommissioning funds and, instead, requiring that all such potential excess funds be returned by the purchaser, Entergy, to customers.

7. By letter dated July 17, 2002, Entergy notified Vermont Yankee that the Vermont Order, as clarified by the Subsequent Orders, are not satisfactory and that Entergy is unwilling to close the transaction except in a manner consistent with the terms agreed to between Entergy and Vermont Yankee.

8. The sponsors of Vermont Yankee, including WMECO, are in favor of consummating the sale because of the substantial benefits the transaction would produce for their customers.

9. In order to meet the requirements of the terms agreed to between Entergy and Vermont Yankee, the sponsors of the Station have reached agreements which, inter alia, would provide tangible near-term economic benefits to WMECO and its customers (the “Liquidation Agreements” or the “Agreements”). Pursuant to these Agreements, WMECO would receive at the closing of the sale, i.e., on or before July 31, 2002, a payment of \$83,333 (the “Liquidation Payment”) in exchange for an assignment to Entergy of WMECO’s right to receive at some indefinite time any future decommissioning funds in excess of the actual cost of decommissioning the Station, should any exist at that time. On July 22, 2002, a filing was made with the VPSB describing the Liquidation Agreements and providing copies of such Agreements. The

filing letter and attachments are appended to the accompanying Affidavit of John B. Keane, filed in support of this Motion. In addition, on July 22, 2002, Entergy issued a press release disclosing its intention to consummate the sale transaction pursuant to the Agreements.

10. The Department has already determined in its June Order that the 2001 Amendatory Agreement, which is directly related to the sale of the Station, is in the public interest and consistent with G.L. c. 164, §1G(d)(2)(ii) because it will achieve savings for customers as well as other benefits, and that the savings associated with the 2001 Amendatory Agreement will be used to mitigate the Company's transition costs. *Western Massachusetts Electric Company*, D.T.E. 01-99, pp. 8-10 (2002). The Liquidation Agreements between the sponsors relating to the immediate liquidation of potential excess decommissioning funds into a sum certain payable to WMECO at the closing is essential to meeting Entergy's requirements to proceed with the purchase of the Station, and would provide additional benefits to WMECO's customers. Such additional benefits include: (1) the elimination of the uncertainty regarding whether there will be any excess decommissioning funds upon the completion of the decommissioning of the Station; (2) the elimination of uncertainty as to when any such excess funds might become available and the loss of value of those funds due to the passage of time; and (3) the elimination of inter-generational equity issues caused by the fact that present-day customers have contributed to the decommissioning fund, yet customers far in the future would receive any potential benefits of future excess decommissioning fund refunds.

11. The attached Affidavit of John B. Keane demonstrates that: (1) it is highly doubtful there will be any excess decommissioning funds at the time of the Station is

decommissioned; and (2) if excess decommissioning funds were to exist at decommissioning in 2042 at an estimated amount of \$100 million, the Liquidation Payment to WMECO represents that present-day payment customers. Because it is particularly likely that no excess decommissioning funds will be present at the time the Station is decommissioned, this payment represents an additional benefit to customers.

12. Under the terms of the Purchase and Sale Agreement by and between Entergy and Vermont Yankee, the sale of the Station must close on or before July 31, 2002.

13. Consistent with the requirements of 220 C.M.R. 1.11(7), WMECO has demonstrated good cause why the Department should re-open the record in this proceed and, based upon the attached evidence, supplement its June 4, 2002 final decision in this matter with an additional finding that the Liquidation Agreements are in the public interest, consistent with the requirements of G.L. c. 164, §1G(d)(2)(ii), and consistent with the findings made by the Department in *Western Massachusetts Electric Company*, D.T.E. 01-99 (2002).

14. WMECO requests that the Department's additional finding state that, "Western Massachusetts Electric Company may enter into the Liquidation Agreements in full satisfaction of its obligation pursuant to the MOU (Exh. AG-RR-SUPP-1(a)) regarding the sharing of excess decommissioning." WMECO submits that all other aspects of the Department's June 4, 2002 Order remain intact.

WHEREFORE, for the reasons set forth herein, WMECO respectfully requests that the Department expeditiously approve WMECO's Motion to Re-Open the Record

and modify its June 4, 2002 Order as described above.

Respectfully submitted,

**WESTERN MASSACHUSETTS
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